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A WEEKLY JOURNAL OF OPINION

Why Not Investigate the Court?

JAMES BURNHAM

Spain Talks Back to the 'Times'

WILLMOORE KENDALL

How to Make Money in the Market

MORRIE RYSKIND

Articles and Reviews by · · FLORENCE FOWLER LYONS
JOHN CHAMBERLAIN · L. BRENT BOZELL · RUSSELL KIRK
REVILO OLIVER · MONTGOMERY GREEN · PETER CRUMPET

For the Record

Representative Kenneth B. Keating, ranking Republican on the House Judiciary Committee, recommends that Congress conduct its own contempt trials of balky witnesses.... The Supreme Court has upheld the conviction for contempt of Congress of Lloyd Barenblatt, formerly an instructor at Vassar, who claimed that Congress had no right to legislate on, and therefore to investigate, education . . . . RCA Communications, Inc. suspended two employees who refused to tell the Senate Internal Security subcommittee whether they had been Communists at a time when they had access to secret government information.

The House Foreign Affairs Committee has asked the House to adopt a resolution making a formal accounting by Communist China for 450 American servicemen missing since the Korean War a "primary objective" of U.S. foreign policy....A pamphlet, "Dwight D. Eisenhower—Soldier of Peace," has been distributed to eighty USIA posts abroad. The booklet, published at a cost of $600, sketches the President's life since babyhood....Passed over by the American press: Ghana, the world's newest democracy and UN member, has silenced her only newspaper with national circulation for criticizing the government.

Sales of Series E and H savings bonds are 16 per cent lower this year than in the first half of 1956. Meanwhile, redemptions are 14 per cent higher....A Senate Government Operations subcommittee approved a bill which forbids the awarding of government contracts to depressed areas....Proposed federal pay raises would cost from $825 million to $2 billion a year—or enough to wipe out anticipated cuts in the budget ....The Senate passed a bill appropriating $111 million more for the Departments of Labor and Health, Education and Welfare than was requested by the Administration ....Dun & Bradstreet reports that nine out of ten industrialists predict a record-breaking expansion during the next ten years.

A new union of labor organizers has demanded recognition from the AFL-CIO. One member of the AFL-CIO's executive committee proposed that the union's ringleaders be fired....San Francisco will outlaw racial and religious discrimination by employers and labor unions.

NATIONAL REVIEW

A WEEKLY JOURNAL OF OPINION

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The WEEK

● NATIONAL REVIEW thinks of itself as lacking neither in respect for the office of President nor in admiration for many of the men who have held it. But it is opposed to all egalitarian practices, including therefore leveling programs for ex-Presidents. We deplore—the more now that the office appears to be reserved for mediocrities—the emergent "tradition" of ministering indiscriminately to the egos of living ex-Presidents by such adulation as accompanied the unveiling of the Truman library. We favor a return to the age of postponing their monuments until history has had a little more time to pass judgment on their deeds.

● Of Senator Kennedy it can be said—as Wilde said of America—that his youth is his oldest tradition. But he is plenty old enough to deserve Secretary Dulles' implied reprimand for his recent irresponsible remarks on Algeria. And to invite the comment that maybe it does make a difference—well, *some* difference—whether U.S. foreign policy is being conducted by Democrats or by Republicans.

● Senator Hubert Humphrey favors a "fresh look at our policy towards Peking," more American newsmen visiting Red China, modification of our trade embargo (it forces China into "ever-closer relations with the Soviet bloc"), and inclusion of China in "any disarmament system." NATIONAL REVIEW favors the early political retirement of Senator Humphrey.

● Thus far without exception, the Communist Parties the world over have submitted to Khrushchev's purge of three of the great erstwhile heroes of Bolshevism—demonstrating once again the total subservience of the Communist Parties of the world to the Kremlin. The submission, after appropriate hemming and hawing, of the American Communist Party is particularly relevant at a moment when a serious legal effort is under way to exempt the Party from the provisions of the McCarran Law, the McCormick Act, and the Smith Act, on the grounds that it is an indigenous and independent political party, not a link in an international conspiracy, or an agent of a foreign power. The heads of the local Communist Party will undoubtedly maintain (and the Courts will, for all we know, be persuaded by their expostulations) that the whole thing was a coincidence, that they had just about got around on their own to deciding that Malenkov, Molotov, and Kaganovich were really non-Party.

● When the nation's farmers come back for their next handout, let Congress ask them to square their demands with this one: A survey conducted by the National Association of Real Estate Boards in 227 communities in all parts of the country shows that the price of farmland is at a "record high level," and appears to be unaffected by fluctuations in farm income. One reason, according to the survey: continued conversion of farmland to residential and industrial purposes, which restricts the supply of purchaseable farmland. Another, which we volunteer on our own: bidding up of farmland prices by persons who want land just to get in on the handouts.

● On a major issue that arose at its biennial congress recently held in Tunis, the International Confederation of Free Trade Unions took its title with unusual literalness. For years the Confederation, with most of its non-American affiliates in Socialist hands, has urged—or rather assumed—that funds for aiding underdeveloped countries should come from governments and through the United Nations, to be used for building government-owned industries. The Tunis Congress authorized a two-year study of such aid, and directed that there should be no bias shown in favor of government development. Some European Socialist speakers joined with AFL-CIO representatives in arguing that much twentieth-century experience suggested that private investment might well be preferable to state investment in bringing a maximum of economic benefits as well as political freedom.

● The *New York Times*, no less, came out against the Brown-Isaacs bill introduced in New York City which would make it a municipal offense for privately owned apartment-building owners to refuse tenancy on account of race, color or creed. Liberaldom is fairly gasping for breath. "We admit," said a prominent Negro weekly, "that we are shocked at the *Times'* position. We are more than shocked—we are painfully grieved." Ditto the *New York Post*, *Commonweal*, *et al.* The *Times'* rationale: "We do not think the people of New York have been adequately prepared for the passage of this bill." That sentiment, expressed south of the Mason-Dixon line, is of course unconstitutional.

● In an able pamphlet, *Automation: Its Impact on Economic Growth and Stability*, published recently by the American Enterprise Association (Continental Bldg., 1012 14th St., N.W., Wash. 5, D.C., $1.00), Professor Almarin Phillips quotes an amusing conversational interchange between a Ford Company official and Mr. Walter Reuther. Said the Ford man: "Mr. Reuther, you are going to have trouble collecting union dues from all those machines." Said Mr.

Reuther: "You know that is not bothering me. What is bothering me is that you are going to have more trouble selling them automobiles." That's tit for tat and butter for fat, all right. Nevertheless, the colloquy rings a little bit hollow when you think it over. Automation in the Ford factories hasn't yet caused any mass layoffs, and the over-all increase in productive efficiency has only served to augment the sale of cars. If there's any forthcoming worry on the score of automation, it probably won't be what either the Ford man or Mr. Reuther thinks. What could happen is that automation, in substituting brains for brawn in factories, might some day create a race of workers who would rise to ask just what Mr. Reuther is doing for them in exchange for all those union dues.

Keep the Pot Boiling

When the State Department released the text of Khrushchev's de-Stalinization speech last year and the Establishment was hailing the professed transformation of the Soviet dictatorship into a "committee government," an editor of NATIONAL REVIEW wrote:

"This anti-Stalin campaign expresses the continuing failure of the Communist leadership to solve the problem of the succession. And it is likely to aggravate instead of soften that problem—because to illegitimize Stalin can only weaken, not establish, the claims of his surviving companions. It seems probable that the Khrushchev faction, by vindicating the honor, prowess and autonomy of the military through the repudiation of the author of the Tukhachevsky purge, is bidding for the support of the officer corps . . . The campaign is the outward, ideological phase of a struggle for domination within the Communist elite . . . Before this new fight is over, there may be many who will sigh for the good old days of Josef Vissarionovich."

Perhaps today Molotov, Malenkov and Kaganovich are thus sighing—if, as is less than certain, they are still breathing—for those bloody good days with their mustachioed comrade, the genial No. 1.

Are we to conclude—as we are immediately (once again) being told—that the Kremlin's internal troubles are now at last over, and that this time, positively, the problem of the succession is answered? Has Khrushchev then won with a policy that will provide, as Mr. Walter Lippmann informs us, "reforms," "stabilization" and "peaceful coexistence"?

The commentators, substituting, as usual, their sluggish wishes for reality, are wrong on all counts. In particular they are mistaken in believing that the questions of a successor to Stalin and a new "general line" of Soviet policy are now definitively settled.

What has just happened in Moscow is a major battle but not a final victory. In this round, moreover, there have been no clear-cut issues of policy. Seeming policy disputes—over agriculture, industry, decentralization, satellite relations, foreign affairs—have been mere counters in the fierce internecine struggle of the Communist chiefs for power bare and unadorned. To prove this it is only necessary to note the composition of the purged group. It is what Trotsky used to call "an amalgam"—a lump of unlike substances mechanically pressed together. There are old-line Bolsheviks (Malenkov, Molotov, Kaganovich) and "new look" operators (Shepilov, Pervukhin, Saburov); the "hard" Molotov and the "soft" Malenkov; the director (Shepilov) and critic (Molotov) of the satellite policy that led to the Hungarian uprising; the executioner of Beria (Malenkov) now accused of being his accomplice; the only Jew left in the upper echelon (Kaganovich) and a Great Russian suspect of anti-Semitism (Malenkov); the earliest advocate of concessions to the peasants and consumers (Malenkov) and its steadfast opponents (Kaganovich, Molotov).

The current Khrushchev grouping—it cannot properly be called a "faction"—is no less disparate. Does Marshal Zhukov sit comfortably with Voroshilov, who carried out Stalin's directives in the secret liquidation of Marshal Tukhachevsky? What, except the imperative of the transient power equilibrium and Communism itself, do the younger Khrushchev allies of the moment have in common with worn-out wheel horses like Kuusinen and Bulganin—or with Khrushchev?

The Central Committee members are victims as well as leaders of their system. No viable method of ruling a totalitarian state has been found other than what, in the case of the Soviet Union, we call "Stalinism": that is, a rigid, hierarchical, monolithic political structure, headed by a single dictator, and sustained by the threat and reality of terror. After Stalin's death, his survivors no doubt genuinely wanted to get away from a scheme of rule so hazardous in their past and so ominous, for all but an undesignated one of them, for their future. But less rigidity, the softening of the terror, and the confusion over who was boss led quickly to a weakening of Communism itself and of the Communist imperial structure. The premonitory cry of the embittered masses was heard from Vorkuta, East Berlin, Kiev, Poznan and Budapest.

A dilemma loomed: continued loosening of the structure could lead only away from Communism (and to the end of all the Communist leaders); a retightening, only back to a one-man-headed, monolithic, terror-based system—*i.e.*, to Stalinism and the groveling of all Communist leaders but one.

This dilemma was inescapable and—without the help of the West—perhaps insurmountable: because,

without indirect help from the West, it may not be possible for the Communist chiefs to return to an effectively functioning Stalinism.

Therefore they had to play for time. To play for time means, in external relations, the policy of "peaceful coexistence," with a tactic of bogging the West down in interminable negotiations. The time that they need, that they cannot do without, the West has given them, and continues to give them.

It is not true that Khrushchev has now "won." Khrushchev is now clearly ahead, but there are still a hundred steps for him to take, and a thousand and one opponents for him to deal with—from Zhukov to Mao—before he can be the new Stalin; and he cannot be secure if he stops short of Stalin's blood-anointed throne.

The West, vainly chasing the will-o'-the-wisp of "the good Communist" with whom to deal in peace, can in reality only gain from a continuance of the Communists' internal struggle, and can only lose if a new political monolithism, able to direct the entire Soviet strength outward, crystallizes around any individual—Khrushchev or Zhukov or a table-turning Malenkov or another, perhaps unknown as yet. In external affairs they don't, after all, have much to show for these post-Stalin years, and they have had trouble keeping the initiative even when we thrust it on them. Is it not self-evidently better that the Communist chiefs should spend at least some of their energy destroying each other than all of it destroying us?

"Long live the unflagging vanguard of the Soviet people—the monolithic, granitelike Communist Party of the Soviet Union! Hurrah, comrades!"
Nikita Khrushchev

How irrational and absurd, then, the frantic Western eagerness to "relax tensions"! Should we not, rather, tighten every tension that can exacerbate the Kremlin's inner conflicts? How absurd, by a TV screen or a disarmament offer or a "summit conference," to build up the prestige of a Communist chief, especially of one who is running ahead in their battle! If we were rational, would we not rather give our careful concern today to moves that would deflate and denigrate Khrushchev and Zhukov, hold them up to embarrassment, ridicule and scorn? These Kremlinites, whose primitive struggles our press treats like the Olympic contest of supermen and gods, are a gross, second-rate outfit at that, if you take a cold look at them.

Let it be repeated: the greatest strength of Communism springs from our weakness.

Cannibalistic Rights

There is an old saying that hard cases make bad law. The opposite is also true: bad law makes hard cases.

In the federal government's criminal contempt case against the Clinton, Tennessee, opponents of racial integration we see both of these rules—or processes—at work. It was the Supreme Court decision in the segregation issue—a bad law—that brought the sixteen Clinton defendants into court on a charge of flouting a federal injunction prohibiting interference with integration at the Clinton High School. It so happens—whether by quirk or design—that the proceedings against the sixteen defendants have been started in the very week which the U.S. Senate has chosen to begin its debate on the civil rights bill. One of the clauses in the civil rights bill would abolish the right of trial by jury in any case arising from violation of a federal injunction such as that issued in Clinton, Tennessee.

Well, the Clinton defendants are getting a jury trial—possibly the last in the history of a civil rights case. A jury—an all-white one, as it turns out—has been selected to pass judgment on the Clinton defendants. It is easy to foresee the effect of a "not guilty" verdict: the Liberals will seize upon it to shriek "I told you so." And they will use any such verdict as ammunition to support the proposed abolition of jury trial in all such cases.

Thus the hard case which has developed out of the bad law could be a complicating factor in creating more bad law. And one civil right—the important one of trial by jury—would be sacrificed to another civil right. When a lesser civil right can cancel a greater, then something indeed is rotten in Denmark.

The effect on still another civil right—the right

to free speech under the First Amendment—might be disastrous. In the Clinton case fifteen out of the sixteen defendants were guilty at most of letting their vocal powers run away with them. What resulted was little more than a street brawl, which could have been handled under local law. If the line of reasoning that has brought the Clinton defendants into court is to be pressed, what might happen if some Richmond, Virginia, citizens were to take the eminent editor of the Richmond *News Leader*, James J. Kilpatrick, at his word? Kilpatrick has argued that it is the duty of a state to "interpose" against a law which it regards as a violation of the Constitution. If "interposition" is obstruction, then anyone advocating it is subject to the injunctive process. Mr. Kilpatrick had better shut up. If he doesn't he could, under the proposed civil rights legislation, find himself in jail—and without benefit of jury trial.

Hero, 1957 Style

A recent exclusive interview in the Minneapolis *Sunday Tribune* with Dr. J. Robert Oppenheimer goes further than anything we have recently seen to cast Dr. Oppenheimer in the role of the heroic and infinitely forgiving scholar, martyr to the base and irrational passions of an overwrought society. Even the symbol of serenity and general benignity—the constant puffing on his pipe—figures repeatedly in the story. The burden of that story is that Dr. Oppenheimer was foully used by his fellow man, but that, far from embittering him, the experience merely caused to burn brighter than ever in him the flame of love for mankind.

NATIONAL REVIEW has several times discussed the controversy surrounding Dr. Oppenheimer. We derive no pleasure whatever from detailing his offenses against his fellow man; but there is no recourse when Dr. Oppenheimer's friends, with his active cooperation, join to make capital, out of his experience, against the security laws of the nation. It is, then—let us say it again—a fact which not even Mr. Edward R. Murrow can expunge from the record, that a jury of Dr. Oppenheimer's moral superiors voted by overwhelming margin that he was not to be trusted in a sensitive agency of the government of the United States.

One has the feeling these days—so far have the rehabilitators of Dr. Oppenheimer carried things—that the only loyal thing a cleanhearted American of great scientific talent can do is a) to give money to the Communist Party for a period of years; b) to associate closely with agents of the Soviet Union, and c) to lie consistently as regards all these matters to the FBI and to security officials. Finally, it becomes necessary, fully to qualify for the esteem of our elite, to display a considerable magnanimity toward those social derelicts who have done less than this for our society.

Cut-Rate Martyr

Last November Defense Secretary Charles Wilson assigned to the Air Force operational control over all ballistic missiles with a range of more than 200 miles. When, a month later, Colonel John Nickerson, Coordination Chief of the Army's Redstone Arsenal where the Jupiter Intermediate Range (1,500 mile) missile was being developed, issued his "Considerations on the Wilson Memorandum," there was much talk of "a new Billy Mitchell case." A brave young officer, triply decorated for combat heroism, was—or so it seemed—sacrificing his personal career in order to warn his country against the bureaucratic stupidities of his superiors. The sense of drama heightened when he was charged with grave counts of espionage, perjury and violation of security, placed under house arrest, and summoned to a general court martial. By the time the court martial ended, the stink of a sleazy publicity stunt in the dreary routine of inter-service knifing was plain to the least sensitive nose.

A new Billy Mitchell might be an excellent thing for the country. And when he appears, it may well be his mission to expose how the absurd duplications and incestuous struggles among our three and a half military services squander our economic substance, destroy our technical efficiency, and make impossible the development of a coherent strategic doctrine.

Overhasty Minister

Centralizers, levelers and secularists fiercely resent private schooling in America. Parochial schools are doubly offensive in that they are privately maintained and religiously oriented. Several years ago, while president of Harvard, Dr. James Conant launched a heavy-handed attack on private schools—on the grounds that they (unlike Harvard, presumably) are "undemocratic" and "divisive." Others chimed in, training their fire largely on Catholic parochial schools, which constitute the majority of private schools in the country.

Now they are off again. Meeting in Omaha, the annual general assembly of the Presbyterian Church in the United States—which represents 2,280 churches and two and a half million people—has adopted a report on parochial education urged upon it by the Reverend Ganse Little, minister to the Pasadena (California) Presbyterian Church, and president of the General Assembly's Board of Education.

Parochial education, Mr. Little charged, engages in "a kind of brainwashing foreign to Christian education." And anyway, "no general superiority, either in academic achievement or ethical behavior has been demonstrated when students of parochial schools are compared with students of public schools."

The Reverend Mr. Little admitted that he had never been in a Catholic parochial school nor studied its curriculum. His generalizations, he said, were based on an "exhaustive study" made by the assembly's Committee on Religious and Public Education.

Of the five educators who composed the Committee, three consented to discuss the report with an editor of the *Tidings*, Los Angeles' Catholic diocesan newspaper. It developed that none of them had been present when the report had been finally drawn up; that none approved the definition of "parochial" adopted by the assembly; and that none knew of any study which had compared parochial and public school pupils.

With the responsibility for his conclusions back on his own shoulders, Mr. Little shifted ground: the enemy, he said, is "*any* system of controlled education."

The Reverend Mr. Little, in a word, doesn't know what he is talking about, but does know that he is very much against parochial schools. He joins others —most conspicuously Bishop G. Bromley Oxnam— in a kind of raw anti-Catholicism-cum-socialism in pursuit of which he is prepared to sacrifice individual freedom and discourage Christian education. One wonders if, his "exhaustive study" having been exposed as a tendentious phony, the General Assembly of the Presbyterian Church will revoke its overhearty endorsement of it.

Just Short of Jail

In 1953, Professor Marcus Singer of Cornell University testified before the House Committee on Un-American Activities and admitted having belonged to a Communist cell while teaching, earlier in his career, at Harvard. He refused, however, to name his Communist associates. In due course, the professor was convicted of contempt of Congress and thereupon suspended from Cornell. The Court of Appeals has now reversed his conviction (citing the Supreme Court's *Watkins* decision). Mr. Singer was duly reinstated: "The proceedings," intoned the Cornell Provost, "produced no evidence of Professor Singer's unfitness to teach."

It is alarming that the Provost of one of the nation's leading universities should derive his college's personnel policy out of the tergiversations of the Supreme Court. Cornell is entitled to an independent judgment on the question whether Professor Singer is fit to teach. It is not a judgment that depends exclusively on the question, should Professor Singer go to jail, a legal matter on which the Supreme Court has the final say. Cornell is entitled to ask more of its professors than that they stay out of jail.

An Act of Faith

The new *Modern Age: A Conservative Review*, is everything that NATIONAL REVIEW and Mr. Russell Kirk's other admirers expected it to be: dedicated to high conservative principle and, like its distinguished editor, courageous, brilliant, and urbane. It is addressed, like NATIONAL REVIEW, to "persons who form opinion in their own little circles, . . . [knitting] together the fabric of society by the respect in which their friends hold their opinions," and has faith enough in America to suppose that "the men and women exist who can write for such a magazine, and can read it."

Modern Age is a quarterly which hopes to build itself, in due course, into a monthly. It reflects a deliberate choice of a "slower" medium than ours, and even this first issue will leave few readers unconvinced that there is a task for it to perform that we, subjected as we are to the pace and discipline of a weekly, could never hope to perform. Frederick Wilhelmsen's article on Toynbee, for instance, which is a far richer and more detailed statement of Professor Wilhelmsen's philosophy of history than we would be likely to find room for, should be read by every conservative. So should Erik von Kuehnelt-Leddihn's penetrating analysis of contemporary Spain, which again we should have had to pass up on grounds of length; and the two hitherto untranslated small essays by Ortega y Gasset, which we should have had to forego on grounds of timeliness. We celebrate the fact that there is now a conservative journal in which such items can be published.

We urge our readers to subscribe to *Modern Age*, published by Foundation for Foreign Affairs, Inc., 64 E. Jackson Blvd., Chicago 4, Ill. $3.00 per year.

Our Contributors: The only article in this issue not written by an editor or associate of NATIONAL REVIEW is "'Facts' à la UNESCO" by Florence Fowler Lyons. Miss Lyons has just completed her fifth year of research on UNESCO. She it was who first exposed the since-famous teachers' manual, *The "E" in* UNESCO, and helped lead the fight which banned it from the Los Angeles schools. She is a regular columnist for the Montrose (California) *Ledger*, possibly the only anti-UNESCO paper in the country.

NATIONAL TRENDS

L. BRENT BOZELL

Blueprint for Judicial Chaos

Senator O'Mahoney, some time this week, will call up a bill that he says is designed to "clarify" the Supreme Court's ruling in the *Jencks* case (the decision that commanded indiscriminate divulgence of FBI files to criminal defendants). The bill will probably become law during the current session. Trial judges in the federal courts will then have to decide whether to follow the "clarifying" legislation of Congress—or the decision of the Supreme Court in the *Jencks* case.

It is hard to say who has acted more irresponsibly—the Supreme Court by handing down the *Jencks* decision; or the Justice Department and the Senate Committee on the Judiciary by supporting the O'Mahoney bill. The Court arrived at its *Jencks* ruling by crudely defying all legal precedent (indeed, by dishonestly claiming the support of prior cases that are either irrelevant to *Jencks* or hold contrary to it); and it did so at the expense of law enforcement in general, and of the nation's defenses against the Communist conspiracy in particular. The sponsors of the O'Mahoney bill have met the Court's challenge by pusillanimously agreeing to "accept" the *Jencks* decision while proposing—in the name of "clarifying" *Jencks*—a rule of evidence that is diametrically opposed to the rule ordained by the Court.

Lifted Out of Context

Prior to the *Jencks* case, the Supreme Court's rule governing the accused's right to government documents for the purpose of impeaching a prosecution witness required a) that the accused show an inconsistency between the testimony of the witness and documents relating to that testimony; and b) (where the documents were "privileged") that the trial judge decide, in camera, that the documents were relevant to the testimony, and that their value to the accused's case was such that observance of the government's wish to keep them confidential would be unjust to the accused. These criteria[1] were noted by the late Justice Jackson in *Gordon v. U.S.* (1952) by way of explaining why the defendant in that case was entitled to look at FBI reports:

> By proper cross examination, defense counsel laid a foundation for his demand by showing that the documents were in existence, were in possession of the Government, were made by the Government's witness under examination, were contradictory of his present testimony, and that the contradiction was as to relevant, important and material matters which directly bore on the main issue being tried: the participation of the accused in the crime. [The demand was for the production of specific documents and did not propose any broad or blind fishing expedition among documents possessed by the Government on the chance that something impeaching might turn up. Nor was this a demand for statements taken from persons or informants not offered as witnesses.] The Government did not assert any privilege for the documents on grounds of national security, confidential character, public interest, or otherwise.

The brackets, which are mine, are inserted for purposes that will appear momentarily.

In the *Jencks* case—since no foundation had been laid demonstrating an inconsistency between testimony and documents—the trial judge refused to order the Government to produce reports to the FBI by informant-witnesses Ford and Matusow describing Communist Party meetings Jencks had attended. The judge was upheld by the Court of Appeals, on the strength of the *Gordon* case.

But the Supreme Court read the *Gordon* case differently. The lower court's reliance on *Gordon*, Justice Brennan wrote, "is misplaced." Why? Because "The necessary essentials of a foundation, emphasized in that opinion, and present here, are . . ."; whereupon Brennan proceeded to quote those words, *and only those words*, in the above passage that are within the brackets. A sleight of hand that obviously earned Justice Clarke's extraordinary rebuke: "The quotations from *Gordon v. U.S.* [in the majority opinion] . . . are lifted entirely out of context."

Privileged Information

There was a second reason Jencks should have been denied the documents. They were "privileged"—originating, as they did, with informants, and affecting, as they did, the national security. While the privileged character of information furnished by informants—whether or not a state secret is involved—tends to be overlooked these days, it is backed by a long tradition in federal law. Justice Gray stated the rule in 1894, *In re Quarles and Butler*:

> It is the duty and right . . . of every citizen . . . to communicate to the executive officers any information which he has of a commission of an offense against [the laws of the U.S.] and such information, given by a private citizen, is a privileged and confidential communication, for which no action of libel or slander will lie, and the disclosure of which cannot be compelled without the assent of the government.

More recent cases have limited both the "informant" and the "state secret" privileges where suppression of government documents would be unjust to the accused. Until *Jencks*, however, that determination—along with the issue of relevancy—had always been left to the discretion of the trial judge.

In the *Jencks* case, the Court took not one, but two huge steps away from established federal practice. Brennan's opinion held not only that the defendant was entitled to the production of relevant prosecution documents, without establishing a foundation of inconsistency, but that the defendant (not the trial judge) is the proper judge of their relevance.

[1] That the trial judge, not the defendant, is the party to determine relevancy and whether or not a "privilege" should be honored was not specifically mentioned in *Gordon*. Reason: no one dreamed, before the *Jencks* case, that a defendant would be allowed to look at secret documents before the judge had determined their admissability. See below.

So that a Communist lawyer is now entitled—as a matter of absolute right—to pore through FBI files that "touch"on the testimony of a government witness to see if there is not something there that may help him impeach the witness. This means that the "informant" and the "state secret" privileges, in such cases, are absolutely gone.

Dean Griswold of the Harvard Law School is not perturbed because (he said the other day) "there is absolutely nothing in the [*Jencks*] opinion giving the public access to the secret files of the FBI." This particular bit of foolishness was laid to rest in Justice Burton's concurring opinion. "Once the defendant learns the state secret or the identity of the informer," Burton wrote, "the underlying basis for the privilege disappears, and there usually remains little need to conceal the privileged evidence from the jury." *I.e.*, the Communist lawyer is precisely the fellow you want to keep the secret from. (Perhaps Dean Griswold is proposing that the lawyer be put on his honor not to tell the comrades?)

Goldman v. U.S. (1942) dealt with a situation almost identical to *Jencks*, and clearly governed the point in question. There, too, the defendant wanted to inspect memoranda made by FBI agents prior to his arrest. The trial judge's refusal was sustained by the Supreme Court:

> . . . where a witness does not use his notes or memoranda in court, a party has no absolute right to have them produced and to inspect them. Where, as here, they are not only the witness' notes, but are also part of the government's files, a large discretion must be allowed to the trial judge.

The majority, in the *Jencks* case, mentioned *Goldman*, then proceeded to ignore it. Commented Justice Clark in his dissent: "It seems to me that proper judicial administration would require that the Court expressly overrule *Goldman v. U.S.*. . . . But that is not done. That case is left on the books to haunt lawyers and trial courts in their search for the proper rule."

The Court's ruling that the accused is entitled to see secret documents before the trial judge has passed on their admissibility is all the more extraordinary for the fact that *Jencks, himself, had not raised the point.* But Jencks' lawyers, in supposing the question too well settled for even the Supreme Court to find justification for a contrary rule, underestimated the imagination and ingenuity of the present Bench.

While Justice Brennan made no direct claim of support from previous cases, his opinion referred to two cases in a manner that suggested they were authority for the Court's ruling. One of them, *U.S. v. Burr* (1807), involved a private letter to President Jefferson that defendant Aaron Burr very much wanted to get hold of. The Brennan opinion quoted at some length from a lament by Chief Justice Marshall on the difficulties that face a defendant who tries to lay a proper foundation for requesting a document without having first seen the document. The quotes are impressive, but Brennan felicitously failed to mention Marshall's ruling that since the letter was confidential and thus privileged, it could be suppressed at Jefferson's discretion.

Judge Hand's Opinion

The other case, *U.S. v. Reynolds* (1953) had no relation whatever to the *Jencks* situation (it was a civil case); but Brennan noted an *obiter dictum* in *Reynolds* referring to a line of criminal cases decided by the Court of Appeals for the Second Circuit, which, he suggested, support the *Jencks* ruling. It is bad enough, of course, when the Supreme Court invokes a lower court as authority for its rulings, but it is worse still when the lower court is, in fact, authority for the opposite rule. I have been able to find only one Second Circuit case that discusses, in any detail, the question of a defendant's right to inspect secret documents (for purposes of impeachment) before the trial judge passes on their relevance. The Court's opinion was written by Judge Learned Hand, no less:

> . . . statements of witnesses taken by one party in preparation for trial need not be disclosed to the opposite party, unless the judge holds on inspection that their contents are relevant. The party who has prepared such statements has an obvious interest in preventing the other party from inspecting them, yet the other party has an interest in introducing them if they are relevant. There is no way in which this conflict can be resolved except by making the judge's private inspection final, subject to review . . . [*U. S. v. Coplon* (1950)].

Senator O'Mahoney's bill was rushed to the Senate floor in order to prevent the wholesale collapse of federal law enforcement that, in the wake of *Jencks*, seems inevitable—at least in the Communist and narcotics fields. On one point, the sponsors of the bill surrendered unconditionally to the Court: once the relevance and authenticity of the documents are established, the bill acknowledges, the government's privilege to keep them secret is no more. But on another point, an equally crucial one, the bill plainly disregards the Court's edict—its sponsors' recreant protestations to the contrary notwithstanding. The bill provides expressly that, before the defendant can inspect documents, the trial judge must decide, in camera, that they are relevant. The Justice Department and the Senate Judiciary Committee justify the provision on the grounds that the Supreme Court's holding on the question was "ambiguous" and susceptible of "conflicting interpretations." But where is the ambiguity in Justice Brennan's language?

> We hold, further [the Court said], that the petitioner is entitled to inspect the reports to decide whether to use them in his defense. Because only the defense is adequately equipped to determine the effective use for purposes of discrediting the Government's witness, and thereby furthering the accused's defense, the defense must *initially* be entitled to see them to determine what use may be made of them. *Justice requires no less.*
>
> *The practice of producing government documents to the trial judge for his determination of relevancy and materiality, without hearing the accused, is disapproved.* [My italics]

Note that the Court made its rule a matter of *justice—i.e.*, a requirement of the process under the Fifth Amendment. The O'Mahoney bill is therefore no answer to the anarchy ordained by the Supreme Court, and will in due course be struck down. Meanwhile, chaos will reign in the lower courts. Meanwhile, too, public indignation will be blunted; laymen are bound to get the false impression that Congress has found a way to reconcile the Court's outrage with the requirements of national security.

Foreign Trends . . . w.s.

Khrushchev's Exercise in Leninist Prudence

Our official experts on Soviet Russia have advanced every possible explanation of Khrushchev's newest coup—save, naturally, the most likely one: that he got rid of Stalin's last intimates in anticipation of an early return to outright Stalinism.

This, to be sure, is not a prediction. There is no demonstrable evidence to prove that the Khrushchev establishment is moving "inexorably" towards a revival of Stalinism. One of the incorrigible mistakes of our official Soviet experts is, in fact, that they have never grasped one of the fundamental characteristics of Bolshevik strategy: that it can *simultaneously* pursue several and seemingly incompatible trends.

The Bolsheviks, thoroughly trained in the arts and wiles of "dialectics," enjoy in addition to their training the essential advantage of a totalitarian society—namely, the enormous leeway in steering a body politic that is not (or, at any rate, not importantly) moved by public opinion. And as the policies of the governing class in such a society must be neither supported nor even necessarily understood by the governed, these policies can afford the kind of inherent contradiction that is intolerable in a free society.

For instance, the Soviets can simultaneously increase their armament *and* frantically promote "disarmament"; while an American Administration, when it decides to peddle "disarmament," is inescapably compelled to reduce its armed forces: American public opinion, once it has been convinced by an Administration that the time has come to reduce international tensions, will not tolerate the continuing burden of a maximum military establishment. Equally, in domestic politics, the Bolsheviks can at one and the same time relax the manners of a police state *and* streamline their oppressive machinery along even more monolithic lines.

Our official Soviet experts have never understood this because they have never understood the nature of the enemy. They are forever handicapped by the underlying assumption that the enemy is, after all, *not* the enemy; that, "when all is said and done," he is motivated by our "normal" kind of motivation. At the bottom of all our fatal miscalculations of Bolshevism has always been the mistake of assuming that the Soviet politician was, after all, just a politician.

We have recently seen an appalling example of this organic inadequacy—Mrs. Luce's sensational blunder in interpreting Tito. Now Mrs. Luce is not only an unusually shrewd person; she also had, as U.S. Ambassador to Rome, for four years an incomparable advantage in studying Communist Yugoslavia. And yet, she was capable of telling her nation-wide TV audience that Tito, in his heart of hearts, was a believer in capitalism. This is what four years of service for an obtusely complacent Administration can do to a considerable and, on the whole, skeptical intelligence: Mrs. Luce now really believes (for she obviously did not deliberately misinform her audience) that Tito is a kind of Modern Republican.

The stubborn refusal of our "experts" to grasp the nature of the enemy is born of their refusal to acknowledge the nature of our tragic predicament: that we are engaged in a war of extreme proportions and unfathomable depth. In such a war, one cannot win unless one is permanently willing to fight and to die. And our society is *not*—not, that is, as long as it follows its natural instincts. And whoever is not prepared to challenge those instincts, and thus to swim against the current, must end up in self-befuddlement.

Consequently, our official Soviet experts are in unanimous consensus that the recent liquidation of Molotov & Co. signals a further "liberalization" of Soviet policies. And so it does —*among several other things.* It is crucial for our survival to be aware of these other things. Among them is the distinct possibility that Khrushchev anticipates a sudden reversal to undiluted Stalinism at home and abroad. For this reason, among other things, he got rid of those of his colleagues who, in such an eventuality, could claim, and cash in on, a vindication of their particular brand of Bolshevism.

In following such a line of prudent precaution, Khrushchev would have applied a most ancient prescription of Leninist practice. Since the early days of Leninism, the faction in power has always, on the very eve of a sudden switch of policy, decimated the potential intra-Party opposition whose policy was about to be adopted. Before he initiated the "rightist" NEP policy in the early twenties, Lenin crushed the "rightist" opposition in the Russian Party and the Comintern who had advocated the ideas of NEP. Before he switched to the most cruel methods of socialist compulsion in the early thirties, Stalin crushed the rigid "leftist" opposition that had constantly advocated the radical statist course. In forty years, the Leninist leadership of Soviet Communism, thoroughly trained in the arts of survival, has learned the basic rule of survival: Crush your opponent before the events seem to justify his position!

The Molotov - Malenkov - Kaganovich faction, much as they tried to comply with the Khrushchev establishment, remained the representatives of undiluted Stalinism. As long as Khrushchev anticipated easy going for his policies of diluted Stalinism, he could afford leniency towards the openly Stalinist faction. But once he began to sense the possible need for a sudden return to monolithic rigidity, he had to mend his fences in time.

Now this, I repeat, is not to predict that the Soviet world is on the verge of returning to undiluted Stalinism. In the very act of erasing the Stalinist faction Khrushchev has indeed acquired, for a while, additional elasticity in handling the Tito-Gomulka faction of international Communism: Tito and Gomulka can now, for a while, assure their followers that the annihilation of Molotov and Malenkov has vindicated their deviations. And yet, if they still remember their own training, Tito and Gomulka must also have grave apprehensions. For their Moscow masters, in a traditional act of house-cleaning, are ominously getting ready to tighten their grip.

Why Not Investigate the Court?

An editor of National Review argues that Congress should undertake an investigation of the workings of the judiciary in order to determine the way in which to answer its recent encroachments

JAMES BURNHAM

In the article that here follows I seek to motivate the following conclusion:

A congressional investigation of the judiciary is the best present reply to the Supreme Court.

How Powerful is the Court?

In a footnote to *Federalist* No. 78, Alexander Hamilton quoted Montesquieu: "Of all three powers above mentioned, the judiciary is next to nothing." Amplifying, Hamilton wrote: "The judiciary, from the nature of its functions, will always be the least dangerous to the political rights of the Constitution; because it will be least in a capacity to annoy or injure them. . . .The judiciary . . . has no influence over either the sword or the purse; no direction either of the strength or of the wealth of the society; and can take no active resolution whatever. It may truly be said to have neither FORCE nor WILL, but merely judgment; and must ultimately depend upon the aid of the executive arm even for the efficacy of its judgments . . . It is beyond comparison the weakest of the three departments of power; [and] can never attack with success either of the other two."

Chief Justice John Marshall was repeating the same essential conclusion when he declared in 1824: "Judicial power, as contradistinguished from the power of the laws, has no existence. Courts . . . can will nothing." And Justice Owen Roberts echoed in 1936: "All the court does, can do, is to announce its considered judgment upon the question. The only power it has, if such it may be called, is the power of judgment."

Reflecting on the decisions of the Earl Warren Court *in re* Slochower, Steve Nelson, Watkins, du Pont, Jencks, Sweezy, Girard College, the Smith Act defendants, what are we to make of this traditional estimate? Were Montesquieu, Hamilton, Marshall and Roberts ignorant as analysts and false as prophets? Have changed conditions made their words irrelevant? Or have we on our side failed to make necessary distinctions?

The answer is suggested in the same *Federalist* paper: "Though individual oppression may now and then proceed from the courts of justice, the general liberty of the people can never be endangered from that quarter; I mean so long as the judiciary remains truly distinct from both the legislative and executive powers. . . .Liberty can have nothing to fear from the judiciary alone, but would have everything to fear from its union with either [or both] of the other departments."

And is this not really obvious? The act of a court is a judgment, and this can be rendered only on an individual complaint that is brought—after the event—before it. The court cannot directly compel anyone to initiate the complaint or to accept its findings. Police and army—the means of coercion—are under command of the executive, not the judiciary. The courts cannot even assure the material conditions of their own existence: the taxing and appropriating powers belong to the legislature.

The judiciary can usurp undue power only with the support or compliance of the other two branches, only in a united front with one or both of them. In the long run the judiciary must inevitably lose in a direct conflict with the executive and legislature—if, let us add, they choose to fight.

Not merely in theory but in historical practice, our system provides an arsenal of weapons—too many, perhaps—for checking judicial encroachment.

The Historical Record

In 1849 the Supreme Court ordered the Wheeling & Belmont Bridge Co. to destroy its bridge over the Ohio River as an "unlawful" obstruction to navigation. The company, disregarding the decision and a subsequent injunction, turned to Congress, which in 1852 passed a statute declaring the bridge to be "a lawful structure." The Court, accepting, noted that although the bridge "may still be an obstruction in fact, it is not so in the contemplation of law."

In 1868, when *Ex parte McCardle*—an action that implied a challenge to the constitutionality of the Reconstruction Acts—was actually before the Court, Congress passed (over President Johnson's veto) a rider repealing the Supreme Court's jurisdiction in all cases arising out of the relevant statute. The Court then dismissed the case. The Franklin Roosevelt Administration similarly exempted from Supreme Court scrutiny the workings of the wartime Price Control Act.

Numerous states have simply refused to carry out Supreme Court writs, or to obey federal court injunctions, and at least a dozen states have released federal prisoners from jail. Throughout our history, judgments of the federal judiciary have frequently been softened, bypassed or negated by many kinds of "state interposition": as in the South today, in resistance to court orders for racial integration.

Congress' Act of March 1, 1863, prohibiting slavery in the territories, flatly contradicted the Dred Scott decision.

In drawn-out conflict with the

Court, the "political departments" have threatened to use, and have a number of times actually used, their power to alter the number of its members. Under the original Judiciary Act (1789) there were six Justices of the Supreme Court. As episodes in Jefferson's struggle to control the Court, the number was changed to five in 1801 and back to six in 1802. It was raised to nine in 1837 (to water down the influence of John Marshall), and to ten in 1863 (to give the North a safer majority); dropped to seven in 1866 (to prevent Andrew Johnson from appointing new members), and rose back to nine in 1869, when Grant could name the new justices—who, as expected, brought a reversal of the Court's previous finding against the Legal Tender Act. Franklin Roosevelt's 1937 "Court-packing" proposal was never adopted; but its threat, combined with his manipulation of public opinion and Willis Van Devanter's forced resignation, brought the Court around to acceptance of the New Deal measures.

The Court can always be corrected by constitutional amendment: amendments XI, XIII and XV were specifically adopted in order to overrule Court decisions. Impeachment is also always a formal possibility, although it has not been attempted for Supreme Court justices since the Jeffersonians failed against Salmon Chase. Still, even the latent possibility of impeachment serves as a psychological curb on the judiciary. And what finally settled the constitutional problems of slavery and secession was the bloody arbiter that has always been the court of last appeal.

Congressional Controls

The Constitution provides for only the barest minimum of our judicial system; all the rest is for Congress to determine. The Constitution decrees "one supreme Court" (composition unspecified), but only "such inferior Courts as the Congress may from time to time ordain and establish." These inferior courts—their numbers, kinds, jurisdiction, funds, duties, rules, their rights to issue writs and injunctions and orders—exist only by virtue of congressional statute.

But the Supreme Court itself—though existing by constitutional and not statutory fiat—is not exempt from congressional control. The number of its members, its budget, even where and when it meets, are subject to the legislative will.[1] The Constitution assigns the Supreme Court "original Jurisdiction" only "in all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party." This paragraph (in Art. III, Sec. 2) then concludes: "In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, *with such Exceptions, and under such Regulations as the Congress shall make.*" (My italics.)

Let us also note that the justices do not grow Topsy-like from the Bench. They are selected by the Chief Executive and confirmed by one House of the legislature. Though by virtue of permanent appointment and human mutability, they, like other men, change through the years, they and their court usually reflect the basic opinions and values of those who have chosen them. The members of the present Court were appointed by Franklin Roosevelt, Harry Truman and Dwight Eisenhower, and in each case confirmed by a legislative chamber tending toward subservience to the executive power. The Court is a product of New Dealism, Fair Dealism, Modern Republicanism—in short of the egalitarian, demagogic, welfare-statist ideology of contemporary Liberalism. It behaves as we should expect it to behave.

To Act or Not to Act

The Court decided that the du Pont holding of 23 per cent of General Motors common stock is illegal under Section 7 of the Clayton Act. It is naive for those who object to the ruling to blame only the Court. The executive arm, not the Court, brought the suit against du Pont. Congress could overturn the decision in a day by a bill repudiating the Court's interpretation of Sec. 7, but there is no reason to think that a majority in Congress or in the nation wants it overturned.

In the Steve Nelson decision the Court declared that Congress had "pre-empted" the field of subversion for the federal government, and thus "superseded" all state laws thereon. (Nelson himself, having been convicted under a Pennsylvania law, was set free.) This decision, like others of the Earl Warren Court, is simultaneously a blow at States' Rights, an enroachment on the legislature and a setback to domestic security. But here too an easy method of correction is at hand: Congress need only repudiate the Court's dicta, and declare that the national laws on subversion supplement, without supplanting, the state laws. The last and the present Congress have failed to do so. It is to be noted in this instance that the Executive, in practice if not always in words, agrees with the centralizing tendency expressed by the Court. Congress is too lethargic or too divided to take the initiative on its own.

The immediate response to the Jencks decision on opening confidential files is an instructive contrast. Here the Executive (spurred no doubt by Mr. J. Edgar Hoover) as well as Congress realizes that the Court's ruling might make a shambles out of law enforcement. Within a couple of days the Administration came up with a proposed bill to plug the gap, and Congress prepared to act on it.[2]

The recent decision freeing a number of California Communists convicted under the Smith Act was based partly on technicalities, partly on a constitutional interpretation of the First (free speech) Amendment, and partly on a criticism of the evidence adduced at the trial as "insufficient." The Court's criteria would make it hard to convict anyone of any kind of subversion unless he were caught throwing a bomb. But under its constitutional powers Congress could remove all questions of fact in these cases (including the question whether the Communist Party is a conspiracy or a debating club) from the appellate jurisdiction of the Court; and could without too much difficulty revise the rather sloppy wording of the Smith Act.

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[1]Not in respect to a salary cut applicable to sitting members, however. In his suggestion that this would be an effective way to discipline the justices (NATIONAL REVIEW, July 6), Mr. Forrest Davis overlooked the constitutional injunction (Art. III, Sec. 1) that their compensation "shall not be diminished during their continuance in office."

[2]Though, as Mr. Bozell explains in this issue, the bill itself is faulty.

Even the Court's decisions on school integration would not have much practical meaning if they were not correlated with already existing political trends. *Brown v. Board of Education,* in the three years since it was rendered, would not have had wide repercussions if the Executive and Congress had been sharply opposed to it, and if it had been wholly out of line with national sentiment. The truth is that the executive establishment agrees with it: both with the policy of school integration, and with the use of national power to coerce the states to carry out that policy.

As on many of the other issues, congressional opinion is divided. If it were firmly opposed, Congress would by now have taken away the power of the circuit courts to issue the orders by which they are implementing *Brown v. Board of Education,* and would have made a stab at removing the entire field of education from federal jurisdiction.

Instead, the House has just passed and the Senate is now considering a "Civil Rights Act" that would not diminish but vastly extend the power of the federal courts to coerce individuals, local communities and states in these racial matters. For the present it is only state interposition that is offering any serious resistance to the integration rulings.

The General Trend

Some of the problems raised by specific decisions of the Earl Warren Court can be handled, and in some cases even will be, by specific legislation. But there is also the more general problem of the Court's fundamental trends, to wit: 1) its assault on States' Rights; 2) its legal sabotage of security measures; 3) its encroachments on the other two branches of government, especially on the legislature, reaching a climax in the Watkins decision, which presumed to tell Congress how to go about its sovereign business of legislating.

Is there any action, politically feasible at present, that would in some measure counter these trends, and pull the Court back toward judicial continuity and restraint?

Impeachment or any of several constitutional amendments could of course do so, but these means (even if desirable) are for the time being excluded in practice. Nor would a Court-packing bill make much sense. In the unlikely event that Congress would vote it, what point would there be in having President Eisenhower name another half dozen Earl Warrens?

> ***"In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make."***
>
> Constitution, Art. III, Sec. 2

There remains, however, a traditional but hitherto unmentioned alternative: a congressional investigation of the federal judiciary, in particular of the Supreme Court.

Whatever its collective attitude on States' Rights, Congress is overwhelmingly opposed to the Court's dilettante treatment of security; and Congress' own political existence is threatened by the Court's tendency to transform itself into a supreme legislature. Very practical motives thus prompt Congress to some sort of broad counter-action. A thorough investigation would be both effective in itself and the best way of determining exactly what further steps are needed.

Instituted under Congress' constitutional mandate to "ordain and establish" the inferior courts, to regulate the appellate jurisdiction of the Supreme Court, and to provide the funds for the maintenance of the judiciary establishment, the propriety of such an investigation could not be challenged even under the provocative reasoning of the Watkins decision. The legislative objective would be clear-cut: to determine, by examining the workings of the judiciary, what changes, if any, should be made in the Judiciary Act and other statutes regulating the judiciary in order to ensure its efficiency and effectiveness in fulfilling its assigned role under the laws and Constitution of the nation.

As directly relevant to such an inquiry the investigative committee would presumably wish to discover the way in which the staffs of the Supreme Court and the inferior courts are selected, the functions of "law secretaries" and other aides of the judges, the exact manner in which decisions are being prepared and written—and by whom.

During the past two decades, comparable congressional research has turned up some remarkable facts concerning many executive agencies and certain of Congress' own committees. Congress found, for example, that though some of its committee orders and reports had been signed by a Gerald Nye, a Harley Kilgore, a Claude Pepper, James Murray or Robert La Follette, they had been written largely by an Alger Hiss, John Abt, Henry Collins or other Communist or fellow-traveler. (Come to think of it, before going to work for Congress Alger Hiss had started his career as law secretary to a member of the Supreme Court.) It would be of more than idle interest to learn just how books by fellow-travelers were cited among the "authorities" of *Brown v. Board of Education,* and how the Smith Act decision's amazing comments on the nature of the Communist Party were arrived at. And a study of the recent swelling of the federal injunctive power would be worth while from every point of view.

In a republic there is nothing sacrosanct about the judiciary to exempt it from scrutiny by the legislative representatives of the people. If the judiciary has nothing to hide—as we must presume—it should welcome a serious and public inquiry. If the judges have been inching beyond their due role in a republican system, an open investigation by the sovereign legislature is an ideal means to remind them of the traditional duties and restraints that bind the true judicial conscience.

Is Congress—are Congressmen—afraid of the Court? Under the Court's galling crossfire Tom Walsh or Pat McCarran would not have waited this long, we can be sure, to propose such an inquiry. And how quickly either one of those tough, fighting Americans would have jumped for the chance to head it!

(Reprints of this article are available at 15 cents each, 100 for $10.00. Address Department R, NATIONAL REVIEW, *211 East 37th St., New York 16, N.Y.)*

'Facts' à la UNESCO

FLORENCE FOWLER LYONS

Offered without comment are the following exhibits from a researcher's file on UNESCO.

Received from the U. S. State Department, in response to a request for information on UNESCO, a pamphlet entitled *About Unesco,* "prepared by CMC (Center for Mass Communication, a Division of Columbia University Press) for the United States National Commission for UNESCO." Dated June 1954.

On page one, under the title: "Educational," appears the following:

"In Ceylon there is a rice paddy. At one time it produced thirty bushels to the acre. Then, as its fertility faded, it produced twenty bushels. Finally it produced less than ten bushels. In terms of hunger this was like the theft of two thirds of the land!

"The question was: *How can the land be made productive again?*

"The young government of Ceylon asked itself this question. It turned to UNESCO for help in finding an answer. UNESCO, which acts only on requests from its member nations, agreed.

"A team of worker-teachers was sent into the area by UNESCO and the health and food organizations of the United Nations. The team came from Sweden, India, England; its leader came from the United States.

"Two years went by. The rice paddy was producing—not just thirty—but MORE THAN A HUNDRED BUSHELS OF RICE TO THE ACRE. In terms of HUNGER this was like some vast, surprising gift of land. The THEFT had been recovered and with it came a reward.

"The reward lay in the fact that the people of Ceylon were learning new ways of tackling their problems. . . ."

RESEARCH NOTE: "World Rice Crop Survey Report" gives the following figures on rice production in Ceylon:

1946-50 (figured 45 pounds per bushel on rough rice) 28 bushels per acre
1951 .... 26½ bushels per acre
1952 .... 28 bushels per acre
1953 .... 29 bushels per acre
1954 .... 27½ bushels per acre

Letter to the Ambassador, Embassy of Ceylon, Washington, D.C., dated September 17, 1956:

"In doing research work, I came across some information as to the work your government's agricultural officers have been doing to increase rice production. I understand that they have been conducting a crop survey system for some years now, and I am interested in receiving *their* production figures, if that is possible.

"There seems to be great conflict in the figures unofficial sources quote, varying from statements that the 1954 production was now 100 bushels to the acre to other sources which state that the 1946-50 average for rice was around 28 bushels per acre, 1953 figure 29, and with a small drop shown for 1954—to 27½ bushels per acre.

"Which of these figures is the most accurate?

"I understand also that Ceylon has received some assistance in this problem from the United Nations and such as FAO. If you have information on this phase, I should greatly appreciate receiving that also."

Answer received from the Department of Census and Statistics, Colombo, Ceylon, dated October 30, 1956:

"Reference your letter of 17th September, 1956, addressed to the Ceylon Embassy in Washington. . . .

"2. With the assistance of Mr. R. S. Koshal of the F.A.O., a scheme was drawn up to obtain figures of the paddy yields. Broadly speaking the scheme is for each paddy field in the revenue units to be listed. Samples from these are selected and the actual crop from the plot is ascertained and the figures checked against the declared yields. In addition the exact extents of a sample of the fields is measured and a correction factor based on the ratios of these to the extents at first declared is applied. I append the figures for the last crop for which these are available.

"Season	*Yield per acre*
"Maha 1955/56	30.92 Bushels."

Letter to the Department of Census and Statistics, Colombo, Ceylon, dated December 5, 1956:

"I do want to express my appreciation for your kind answer to a previous inquiry of mine in September concerning rice production.

"A pamphlet published in the United States promoting UNESCO makes the following statement:

> In Ceylon there is a rice paddy. At one time it produced thirty bushels to the acre. Then, as its fertility faded, it produced twenty bushels. Finally it produced less than ten bushels. . . . A team of worker-teachers was sent to the area by UNESCO and the health and food organizations of the United Nations. The team came from Sweden, India, England; its leader came from the United States.
>
> Two years went by. The rice paddy was producing not just thirty—BUT MORE THAN A HUNDRED BUSHELS OF RICE TO THE ACRE.

"Please, Mr. —— can you give me the *exact location in Ceylon of this rice paddy which is producing more than one hundred bushels to the acre,* and how *large is that paddy?*

"The exact title of this pamphlet is: *About Unesco* and it is distributed by the U.S. National Commission for UNESCO. . . ."

Answer received from the Department of Agriculture, Peradeniya, Ceylon, dated February 6, 1957:

"I have the honour to acknowledge receipt of your letter dated 5.12.56 addressed to the Director of Census and Statistics who has referred same to me for disposal and reply direct.

"The area referred to is Hingurakgoda. The varieties grown in this area are *Vellai Ilankalayan* 28061 for Maha and *Pachchai perumal* 2462/11 for Yala. The average yield obtained in the farm in recent years is about 36 bushels per acre.

"*It is not correct that the yield in this area declined from 30 bushels to 10 bushels.* The yield of paddy in this country has increased somewhat in recent years owing to the adoption of improved techniques and to the Guaranteed Price Scheme, *but spectacular claims like those made above cannot be substantiated.*"

Spain Talks Back to the 'Times'

A very hurdy-gurdy of a reporter tries to talk away a famous episode of Spanish history. But the Alcázar does not yield, even to the 'Times'

WILLMOORE KENDALL

Madrid

Mr. Herbert Matthews is a great reporter who (as noted in NATIONAL REVIEW a few weeks ago) tells the truth as he sees it. He "loves" Spain; and, having "covered" it for the *New York Times* for more than a quarter of a century, he "knows" Spain. When he says disagreeable things about Spain, he says them not because he wants to say them, but because he has no choice; because, as an expert, he knows them to be true.

So the Matthews myth as, little by little, he lets it be torn out of him in his *The Yoke and the Arrows*—and as, with minor variations, it has been repeated by the international Liberal apparatus which has made Mr. Matthews' *the* book to read on Spain.

The reality, as one may learn by studying Matthews' antics over that famous quarter of a century, is the precise opposite. Matthews is a great reporter just as the hurdy-gurdy now playing down in the next block—I paid the man 10 pesetas to move on—is a great musical instrument. He loves Spain: not for what she is but for what she might have been—might still be, if only she had behaved, would behave, as Matthews through all these years has wished her to.

The good news from Spain, as of this writing, is that the Spanish—over the past weeks in their daily press, and now in a small book (*El Alcázar No Se Rinde*) by an able Madrid newspaperman named Manuel Aznar—have done something to Mr. Matthews that is long overdue: they have given him, right out in public, the hiding he has long deserved, and hung about his neck the placard he has long been asking for. "This bird," it reads in effect, "fouls other birds' nests."

Not, I hasten to add, by confuting the general argument of *The Yoke and the Arrows*. The Spanish know Matthews from of old, fully understand the optics of those strange blinders he wears, go much further than this correspondent would in treating his distortions of Spanish reality as within the rules of fair political polemic, and assume—with typical Spanish generosity—that he does not knowingly distort, but merely gets his information about Spain from the wrong people.

The Spanish have nailed down Matthews by repelling the central assault of his book, an assault on the most famous symbol of the Nationalists' courage and of the savagery of Loyalist methods: the saga of the Alcázar. For Matthews, the destruction of that legend is, historically and morally, imperative. With it, his case—the world's case—against the Nationalists is uneasy. Disposed of, the way is, symbolically, paved for the black and white relationship that Matthews, and so many others, find rhetorically necessary in evaluating the Spanish Civil War.

The episode at Alcázar, says Matthews, never happened. It is a tissue of falsehoods.

Says Aznar, *"Here is my answer to Matthews: The Alcázar does not surrender. Not in 1936. And not in 1957."*

And then the countercharge: "In the pages he devotes to the Red version of the Alcázar incident, there is hardly one accurate word. Matthews has been the victim of a huge hoax."

Herewith, before following Aznar further, a brief paraphrase of the offending pages (which Aznar, with exemplary fairness, reproduces in full). The Alcázar, Matthews recognizes, "is the greatest sanctuary and greatest symbol of the Civil War." He personally ("despite gnawing doubts") has always been inclined to accept the "Franco version" of the incident that made it that—even if it did seem "a bit too good to be true," and even if it did not "fit the psychology of the Loyalists." But, "shame" though it be to "destroy a wonderful story like that of the Alcázar," he now—having made "inquiries" about it during his last trip to Spain—has no alternative but to announce that, "like the story of George Washington and the cherry tree," it is a "myth."

And these are the reasons Matthews advances:

1. The hero of the story, Colonel Juan Moscardó, commandant of the Alcázar, Nationalist fortress in Toledo beseiged by Loyalist forces, could not have received the famous telephone call from Madrid on July 23 demanding his surrender because telephone service to the Alcázar—as also water, gas, and electricity—had been cut on July 22.

2. The Colonel's son, Luis, whom the Loyalists—the "myth" has it—threatened to kill unless the Colonel surrendered, could not have been on the other end of the telephone, because he was dead! He had been killed as a private soldier in Madrid, on July 19. Moreover, Luis was 19 years old and not, as the Franco version has it, sixteen.

3. Colonel Moscardó was merely the "nominal commander" of the Alcázar (he happened to be there, and happened to outrank Colonel José Abeihlé, who was at all times the "real commander").

4. Colonel Moscardó, what with the other officers present knowing "their lives would be forfeit if they were captured," could not have surrendered *even* had he wished to; and the Loyalists would have had to be "naive and stupid" beyond belief in order to suppose the contrary, thus making the mythical phone call inherently improbable.

5. The "heroic" defenders of the Alcázar, far from having been duty-bound to defend the 570 women and children who were with them, had "lured and stampeded them into the

fortress," and simply used the "poor creatures as hostages"—and this despite "repeated Loyalist attempts to get them freed." "Their presence and suffering represent one of the most shameful incidents of the Civil War on the Franco side." Moreover, "Spain's famous and outspoken philosopher, Miguel de Unamuno, got the [real] story in Salamanca at first hand from two nuns who had been at the Alcázar all through the siege, acting as nurses, and who were outraged by what had [really] happened."

6. "Between September, when the Alcázar was relieved, and November, not a word was said about the incident of Moscardó, his son, and the telephone. Is this not strange?"

7. The story ("What's happening, my son?" Colonel Moscardó asked. "*Nada*—nothing, they say they are going to shoot me if you don't surrender the Alcázar." "Well then, commend your soul to God, cry 'Viva España,' and die like a patriot.") is too good to be true because it is old hat: it really happened to Guzmán el Bueno, at Tarifa, in 1294: "Guzmán contemptuously drew his own dagger and flung it at [the Moors], telling them to kill his son [whom they held in plain sight] with that."

Aznar's rebuttal—highly compressed:

1. Matthews hasn't even got the so-called "Franco version" correct. Moscardó's first name was José, not Juan. The famous telephone call was from Toledo, not Madrid. (*I.e.*, it was George not John Washington, a hatchet not a saw.)

2. Luis Moscardó was neither 16 nor 19 but 24 (evidence: a photostat of Luis' birth certificate.) He was *not* a soldier in July 1936. He had completed his military service in 1932, and in 1936 was attending college in Toledo. On the day of his alleged death in Madrid, he was with his parents in Toledo. Writes Aznar: "I can provide my American colleague with twenty—or, if he likes, 30 or 40—personal witnesses to this effect; if he can bring forward one person to testify to his presence [in Madrid] . . . I shall acknowledge myself beaten." (Fair enough?)

3. The Alcázar was indeed without telephone service on the day in question—for the excellent reason that

the Loyalists were in control of the exchanges, and had interrupted the service. For the same excellent reason, however, they were in a position to restore service whenever telephonic communication to the Alcázar should prove useful to them. (Evidence: the records of the Alcázar, noting the receipt of the phone call; testimony of persons *on both ends* of the disputed telephone call.)

4. The "real commander" of the Alcázar, Colonel Abeihlé, at no time took part in the defense of the Alcázar and was not even there when the ultimatum was telephoned in. His wife, now living in Madrid, testifies that they removed to Madrid on July 14, and that the Loyalists arrested him there on July 23.

5. Three of the persons who heard Colonel Moscardó's end of the conversation have since died; two are still living, and available to be interviewed by Matthews whenever he likes. Both—far from assuming that Moscardó was not in position to save Luis' life—listened with "trembling admiration" as he replied. There is, moreover, contemporary documentary evidence that one of the three who have since died "went out into the patio and, having called together all of the defenders, related to them in a hushed voice, vibrant with emotion, what had just happened, . . . and repeated as best he could the dialogue over the 'phone; each man present, full of admiration for the Colonel, laid his words in his heart."

6. Luis Moscardó was indeed executed on July 23, in Toledo, just as the "Franco version" has always held. (More documentary proofs.)

7. Nothing was said about the incident until November? Aznar includes in his book photostatic copies of articles from the September 30 and October 1 editions of the Seville newspaper *ABC*, relating the incident in full detail.

8. As for the women and the nuns: ". . . Colonel Moscardó and the other defenders of the Alcázar would [obviously] have preferred to admit no women or children to the Alcázar, since this would have simplified their task of defense enormously. . . . [In any case] how many of those women who were present during the Alcázar siege would Mr. Matthews like to have step forward and proclaim, for his own ears to hear, [the truth]? The nuns? A pretty joke that one. There were five nuns in the Alcázar. Two are dead. The three others are . . . in Zaragoza. So Matthews' informants must be relying on the testimony of the two who are [like Unamuno himself] dead. . . . Let Matthews remind his informants of the well-known lines:

> When stars tell falsehoods
> They tell with impunity;
> Against interrogation
> They've total immunity.

As for me, I rely only on living witnesses, all of whom have mailing addresses."

Concludes Mr. Aznar:

"Was Matthews genuinely interested in learning the truth about war and peace in Spain, or did he come here . . . in search of phantasms that his fury could translate into imitations of the truth? . . . 'I suffer,' he exclaims, 'because the fascist zone was victorious. . . . But may I add that the struggle continues? What, a modern Pilate might ask, *is* victory?' Nothing will do him but that the victory of the Nationalists is revocable, reversible; that the clouds of the past shall swallow up the date April 1, 1939, causing it to disappear from history like an empty shadow; . . . that what happened shall simply not have happened. He is, as he himself says, a 'tortured soul.'"

9. It didn't happen in 1936 because it happened in 1294? And the Loyalists wouldn't have been so naive and stupid as to try such a stunt—though the Moors would have been? Aznar answers only the second question. Naive and stupid or not, they *did* try it, and here are the proofs.

Let me answer the first: Has the news not yet reached the *Times* that the *function* of tales of heroism in a nation's history is to see to it that the deeds of which they tell—flung daggers and pleas of guilt by little boys—are repeated over and over again? Or was the news deemed not fit to print?

How to Make Money in the Stock Market

MORRIE RYSKIND

To those people who know me even casually, I suspect the title of this article (in conjunction with the author's by-line) will seem to be the funniest thing I ever wrote. I could stop right now and get a million laughs.

Not that I blame them. My record, in the field of risk capital, is not one to boast of. Such money as I have made over the years has come from writing, and it has been a fair amount: and I am deeply grateful to this philanthropic government of ours which has permitted me annually to retain some small portion of it. In some years, after taking care of my living expenses, there has even been a thousand or two left over. A less dedicated man might have put such windfalls into a savings account, but my passion for the American way of life has inevitably led me toward investing such sums in the calculated risks on which this free economy depends.

Measured in strictly monetary terms, perhaps, these ventures of mine have turned out dismally; but, patriotically, mine has been the satisfaction of knowing that my small efforts have helped to keep our system going. (This feeling—unless you, too, are dedicated—is somewhat difficult to convey; my wife, a wonderful person in other respects, doesn't get it at all.)

For example, on my first visit to that last frontier of freedom, Las Vegas, I watched a roulette wheel for half an hour and noted that number 9 hadn't shown up. A keen student of the law of probabilities, I invested a silver dollar on that number; again, it failed to appear. I was not dismayed; 399 times more I put a silver dollar on 9, skipping dinner in the process, and it *still* didn't come in. By that time, I couldn't afford dinner. . . . Well, that's the way the ball bounces. Since then, when I pass through Las Vegas, I leave the roulette table alone and stick to the slot machines.

For years, I attended the weekly sessions of the Hoyle Club, a direct descendant of the Thanatopsis Inside Straight and Literary Society founded by F.P.A. Those culturally memorable sessions, though they always began with some tributes to William Cullen Bryant and William Jennings Bryan—we were never certain which one had written "Thanatopsis," and played it safe—usually concluded with a ceremonial game of poker in honor of Mr. Hoyle. I recall my last game vividly. Eight hands were dealt; but after a dozen or so raises before the draw, only three remained: Russell Crouse, the playwright; that celebrated actor and advocate of repeal of the Sixteenth Amendment, Charles Coburn; and myself.

Crouse stood pat, while Coburn and I each drew two. Crouse bet out; I found I had drawn the fourth eight, and, if that isn't worth risking capital on, nothing is, so I raised. Coburn reraised. After about the tenth raise, Crouse dropped his straight together with some fine old Anglo-Saxon invectives, leaving me alone to face the monocled libertarian. Charles and I went at it, and after another hot series of raises I not only felt sorry for my old friend, but I realized that he might have four nines, so I called. Coburn, staying on the king, jack and ten of hearts, had drawn the ace and queen of that suit for a royal flush. What a risk capitalist he turned out to be!

On those now infrequent occasions that I visit a race track, be it Santa Anita or Belmont, it is not unusual for total strangers to come up and politely ask me to mark my choices for them—which they thereupon avoid like the plague. It seems that on that unforgettable day at Hollywood Park, when Willie Shoemaker rode eight mounts and brought six of them into the winners' circle, I created something of a record myself. The only time I bet on Willie that day was when he rode his two losers. These stories have a way of getting around, and I have had horse owners plead tearfully with me not to bet on their entries.

And my market record—with one outstanding exception I shall note later—is just as striking. It began one spring day in 1929 when Groucho Marx, the famed quizmaster, invited me to his club for lunch and a round of golf. We had just reached the sixth tee when Groucho's brother, Chico, came running to tell Groucho of a tip he had just received on a certain stock. Groucho is normally a careful man before he invests, but a tip is a tip and Chico's enthusiasm was infectious. "I'll buy a thousand shares in the morning," he promised. But Chico said the stock would go up at least ten points by the morning, and urged immediate purchase. It was 2:35 and Groucho still had 25 minutes to become a millionaire. Whereupon Groucho pulled me off the course, golf shoes and all, into his car and we went whizzing to his broker's office. He got two tickets en route, and would have had a third except for a kindly officer whom he persuaded that Mrs. Marx was undergoing labor pains and had to be rushed to the hospital. We arrived at the broker's office at 2:57, Groucho breathlessly ordered a thousand shares, and, by 2:59:30, he had persuaded me to join the wealthy by buying a hundred shares.

At ten the next morning, I was in a broker's office studying the strange symbols that would enable me to retire at an early age. In the first announcement that flashed over the Dow-Jones news service, the stock I had bought was mentioned prominently. By order of the Board of Governors, it had been stricken from the board and all trading in it suspended. Most of the other stocks waited for the big crash that came in the fall, but this baby didn't fool around.

In the main, my other market tilts with fortune have followed a similar

(*Continued on p. 95*)

From the Academy

RUSSELL KIRK

An Adventurer-Professor

Hilaire Belloc, in *The Path to Rome,* inquires why it is that professors are afflicted with the twitch, the halting gait, the squint, the humped shoulder, all the marks of oddity. And he answers that this is a curse put upon the breed for their great sin of intellectual pride.

Professor Frederick Wilhelmsen, of the University of Santa Clara, is probably Belloc's chief American disciple; and Mr. Wilhelmsen, though he would have justification for intellectual pride, is a modest man. He does not twitch or halt or squint or hump. Though one of the youngest among well-known American scholars, he is one of the few men alive who know how to sail a square-rigger; he has wandered in remote corners of the earth; he brings to his classes in philosophy the art of worldly wisdom. His first book was published three years ago: *Hilaire Belloc, No Alienated Man.* Mr. Wilhelmsen himself is not alienated from society—he is no defiant intellectual, "nibbling away at the foundations of society"—because he knows that he is a small part of a great continuity and essence. Like Belloc, Mr. Wilhelmsen participates in the strength of Romanitas, the ancient order which gave justice to the world. And also like Belloc, he is a champion in the lists for Christendom, the civilization and the faith which is our breath of life.

Just now, Dr. Wilhelmsen is a Guggenheim Fellow, preparing to write a book about the alienation and boredom which afflict our age. He is very active in the cause of Hungarian freedom, assailing that failure of nerve which has brought us to the brink of destruction. His essays in *Commonweal* and elsewhere are among the best American periodical writing of this century. And he has published another book, a book which makes him kin to the scholar-gypsy Roy Campbell: *Omega, Last of the Barques* (Westminster, Maryland: Newman Press, $3.75).

In the ports of Peru lie three big barques, the last square-riggers in commission in all the world, except for a few government training-ships equipped with auxiliary engines; and of these three, only one, the *Omega*—its name, by a curious chance or providence, signifying "the last"—still puts to sea. The *Omega* sails to the guano islands off the Peruvian coast, carrying thousands of tons of bird-dung to the valleys of that strange dead land, Peru: a mean final office for the splendid great ships which used to round the Horn. Born in Detroit, Frederick Wilhelmsen learned in his youth, on the Detroit River, the arts of seamanship, and four years ago he and his brother made up their minds to sail under the white canvas of a barque before the last of the old song of sailing ships was sung. Thus they made their way, with very little money in pocket, to old Peru, and bullied the captain of the *Omega*—a German captain, for these Peruvian barques were taken as prizes by Peru in the first World War, and the captains stayed with their ships—into letting them sail with him to Isla de Macabi, that dreadful treasurehouse of guano.

This book about the *Omega* is a work of travel-literature and a work of philosophy. Its asides on the history of sailing-craft, on the Indians of Peru, and on the ways of sailors are full of wisdom. Consider this passage on the tarnished splendors of the old Hotel Maury, in Lima, when the "closely-bred and pale Peruvian aristocrats" come into the city of the Conquistadores for the Feast of Saint Rose of Lima:

> On such occasions it is better for the foreigner to take a table in a far corner, and it is even better for him to stay away from this place altogether. Should he intrude, he will be greeted with a high courtesy that has its origins in the sombre dignity of the Escorial. But no American can meet that manner, that subtly refined instrument that reveals and masks at once. We cannot match the Spanish Lie, so full of irony and utterly devoid of cynicism. No Northerner can really understand the dark richness coloring the Hispanic way of life, domesticating tragedy and making suffering part of the pageantry of human existence. We are separated from them by half a millenium, and yet it explains nothing to say that we have chosen the future and they the past. They have known failure and have not feared to embrace its poetry. We are haunted by but one tragedy, dogged by but one enemy: before the spectre of time we are proven cowards; we lack the courage to let history pass us by.

This, I submit, is worthy of Cunninghame-Graham or D. H. Lawrence or Roy Campbell or Hilaire Belloc. Mr. Wilhelmsen comes of a line of North German wagonmakers, but he penetrates into Latin character as no zealot for American improvement of the "underdeveloped nations" is likely to do. He is a professor of high gifts because he really has something to profess: the contract of eternal society.

One of the most acute critics of twentieth-century technology and its social consequences—he wrote the preface to the Gateway reprint of Juenger's *Failure of Technology*—Frederick Wilhelmsen never despairs of the human destiny. Because he understands human nature and its harmony with the nature of things, he never is disheartened. This world was made for our wonder and enjoyment; and delight in it we shall, despite all the dreary schemes of the dehumanizers, the servants of what C. S. Lewis calls "that hideous strength." It is a commentary upon our time that the Wilhelmsens were thrown into jail when they returned to Peru from their voyage, because of the omission of a stamp in their passports. Yet so long as we have a saving remnant of Frederick Wilhelmsens among us, the world will not become one immense Panopticon, a model utilitarian prison designed for the "conditioning" of human nature. So long as such men live and write, it will not become a benevolent and despotic empire like that of the Incas, an "Empire of the Dead." Men like Frederick Wilhelmsen love life because they are not afraid to put off mortality.

BOOKS IN REVIEW

Intellectual, Good and True

JOHN CHAMBERLAIN

There are many reasons in America for disliking to be called an "intellectual." In this day and age the "intellectual" is almost invariably a narrow man. If he is a novelist he stakes out a "tiny room in Bedlam" (Malcolm Cowley's apt description). If he is a playwright he specializes in a lugubrious sort of dirt. If he is a critic he anatomizes coterie writings, or elects to lead a safe life in some campus backwater. In his politics he is "liberal," but the great generations of liberalism, from Locke to Lord Acton, are unknown to him. He accepts all the clichés of thought underlying the Providential State without realizing that he is thereby making himself an accessory to the devitalization of society. Finally, he knows nothing of Hilaire Belloc.

Hilaire Belloc was a true intellectual. As Robert Speaight shows in a long, rambling, incredibly rich authorized biography, *The Life of Hilaire Belloc* (Farrar, Straus and Cudahy, $6.50), this strange, half-English, half-French man of letters was interested in a thousand things, and he tried manfully to get to the bottom of at least half of them. He wrote prodigiously for some sixty years, turning out four, five and six books a year, and the more he wrote the less superficial did he become. He hated footnotes, but he stood for what is vital in scholarship, which is honest reconstruction within the frame of an openly stated point of view. He was a lyric poet, and a good one; he knew an incredible lot about the French Revolution; he had an eye for landscape, both as it spoke to the senses and as it explained the movement and the fate of civilizations; he had a knack for making military history readable; and he was an economist who was busy warning us about the breakdown of socialism into the "servile State" long before the Labor Party and the New Deal had triumphed in England and America.

Though he had a streak of melancholy which was accentuated by the early death of a beloved wife, he kept his sense of fun. He liked wine, he liked exercise (particularly long rambles or bicycle rides), he liked to inspect Roman ruins in North Africa, he enjoyed family life, he indulged in prodigious talkfests, he was a gourmet, and he enjoyed being controversial, both on the hustings (he had two terms in Parliament) and on the lecture circuit. Finally, he had a religious attitude toward life (he was a very individualist Roman Catholic) which irradiated everything he was and did.

Belloc believed in the Roman West, in the Christian tradition, and in a life organized on a recognition of private property, because these three things combined to encourage a wide variety of interests and accomplishments in human beings. Equality before God and the law in a private property system brought out the natural inequality of man. This, far from being destructive, gave every man the benefit of the other fellow's specialty. The only troublesome thing about maintaining this point of view in England was that British capitalism seemed to run to monopoly, which, in turn, gave rise to the politics of Fabian socialism. Even before World War One, Belloc saw the "servile State" looming in the offing as capitalism broke down into the morass of Fabian "planning." It would not be true socialism, so Belloc predicted, when the State took over responsibility for operating the means of production.

Belloc's book, *The Servile State*, proved uncannily prophetic of events in Europe. And, mainly because American "intellectuals" like to imitate what happens in Europe, it is proving prophetic for America. The irony of this is that the basic English realities which drove Belloc (and Chesterton along with him) to their "distributist" philosophy have never pertained in America. Here we have always been "distributist." Not since Thomas Jefferson's day have our land laws encouraged the preservation of big landed estates. To the consternation of Marxists, the middle class in America pushes downwards and upwards at the same time, bringing more and more of the population at each end of the scale into the orbit of its feelings and values. The trouble in America is not that we lack "distribution," but that the distributists want their homes to be like all other homes, ranch-style. Instead of planting trees, they plant television aerials. And instead of investing in United States Steel and owning a controlling share in the business (as Ben Fairless has pointed out they might do with only small amounts of individual savings), our workers elect to support a union hierarchy which delivers them straight into the hands of the State. It will be the "servile State" here, not because conditions have warranted it, but because of the inability of American "intellectuals" to analyze, Belloc-fashion, the relevance of means to ends, or even to know the actual condition of the means of life when they see them.

Fashion turned against Belloc in England, but instead of complaining Belloc went on working. If he could not find one market, he cultivated another. Fortunately, he had at least forty strings to his bow. He could write political satire. If the appetite for that proved dull, he could turn to essays on the sea, or to "caution-

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—JOHN MARSHALL BUTLER, United States Senator

"We have already contributed over $1,200,000,000 to sustain Tito-type communism in Yugoslavia. It is now about to be announced that we will send more jet fighting planes to Communist Yugoslavia.

"We have many good and stout allies (Free China on Formosa, Korea, Turkey, Pakistan, Vietnam, Thailand, and the Philippine Republic) that need more jet planes. All of them should have priority over Tito's Yugoslavia."

—WILLIAM F. KNOWLAND, United States Senator

"The deadliest subterfuge and betrayal by Communists is their attempt to sell Tito to the world as an independent and a neutral."

—ALVIN E. O'KONSKI, Congressman, 10th District of Wisconsin

"On every occasion, Tito has declared his oneness with the Communist world conspiracy. His line has always been that he is the one who should promote world Communism and that Stalin was 'off the beam.' He has been, and is, the most effective salesman in the Communist conspiracy."

—WALTER H. JUDD, Congressman, 5th District of Minnesota

This is the incredible story of Titoism, the greatest hoax of the Twentieth Century.

Relentless pro-Titoist propaganda has spread the belief that since Tito clashed with Stalin in 1948 over the independence of Yugoslavia, he is a natural ally of the Western nations. Fellow-travelers, defeatists and those people who look for simple explanations and easy solutions, vie with one another in singing the praises of Tito and his "special brand" of communism.

Tito is not Moscow's enemy, says the author, Dr. Slobodan Draskovich, but the most loyal supporter of Soviet imperialism, and its most valuable agent. In helping Tito, the West is helping to dig its own grave.

Moscow learned very quickly after World War II that its best strategy was "soft" communism, designed to lull the free world into a feeling of false security and to convince us that the only way to save ourselves from communism was to help communism. The West fell into the trap and gave generously to Tito. In the autumn of 1956 the Soviet Union was unmasked before the whole world as thoroughly corrupt, utterly inhuman, and amazingly weak. It can now work on the West only indirectly through "Titoism" and its counterparts in other satellites.

No author until now has analyzed so expertly Tito's role in the cold war, his service to the communists' plan for world conquest, and the harm he has inflicted on the West and the cause of freedom everywhere. Recent events in Poland and Hungary, for example, become much more meaningful in the light of Tito's true position.

If we really mean to fight communism, insists the author, we must first expose the communist robot—Tito of Yugoslavia.

There should be a thorough and impartial Congressional Investigation of our Tito Policy since 1941 to expose the propaganda which is having such a dangerous effect in brainwashing the American people and serving as a smoke screen for activities equivalent to treason. The evidence produced by such an inquiry would jolt us out of our lethargy, fix responsibility where it belongs, and put an end to our unrealistic and suicidal foreign policy in reference to satellite nations.

Every American owes it to his country and to himself not only to read but to carefully study this significant book. We are certain that those who do so will send copies to others who should be alerted; that they will insist on prompt and effective action by their Senators and Congressmen.

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ary" tales in ludicrous verse for children, or to colorful history, or to travel books which mingled a love for landscape with a taste for all the refinements of civilization, from music and painting to the proper way to cook beans or frogs' legs. During his lifetime England supported a variety of weeklies as well as publishing houses and newspapers. The individualist could usually find some place to make himself heard, even at a time when Fabianism seemed to be carrying everything before it.

Mr. Speaight does not attempt to explain the inconsistencies in Belloc. This very civilized man, probably because of his love for the French Army in which he served for a year, took a ridiculous stance in the Dreyfus case. Though he liked individual Jews, Belloc, who disliked financiers in general because of their frequent concentration on the abstract factors in money-making, could say idiotic things about Jewish financiers. This did not make him a Fascist, for he disliked State power in general and the German exercise of State power in particular. But it did make him annoying.

Belloc was also inconsistent in his attitude toward tax matters. He hated the levelling effects of the income tax. But he could urge differential taxation to break up big holdings. He did not seem to realize that big holdings tend to disintegrate by themselves in inefficient hands if they are not improperly shored up by special legal grants of privilege.

If Mr. Speaight attempts no very profound analysis of Belloc's character, he does put everything in. His book will be invaluable to all future students of an intellectual who was truly worthy of the name. When American intellectuals start to read Belloc, they will be on the road to redeeming their own title to a designation which should be a glory, not the reproach which it has become.

Minor Masterpieces

The Last Recollections of My Uncle Charles, by Nigel Balchin. 255 pp. New York: Rinehart & Co. $3.50

Mr. Nigel Balchin, an Englishman, is presented again to America with this rosary of short stories. May he receive — he *should* receive — a wide and warm welcome! He descends happily from, and has inherited some of the genius of, Aristophanes, Apuleius, Boccacio, Chaucer and the best of the Pickwickian Dickens.

He strings a necklace of anecdotes, each one a prism of radiant intelligence and understanding, on the thread of his irresponsible and immensely lovable Uncle Charles. Uncle Charles is a sponge who, if he lives off his friends, does so with elegance, and who has the distinct recommendation of having soaked up and stored for our enduring delight more of civilization than the great mass of the world's hardworking nonentities.

Uncle Charles is that anachronism: a man born to leisure, a dilettante of superior living. He is as necessary to the preservation of the world's sanity as an artistic genius or a builder of an industrial empire. He is the superficial and sycophantish superfluity that this proletarian age has done its best to exterminate; which age, when it suceeds, will succeed simultaneously in exterminating art and music and wisdom and the good material things of life.

Not immune to the garrulity of age, Mr. Balchin is careful to explain, Uncle Charles has probably repeated his stories. He demands, perhaps, much patience from the busy modern man. He is like chamber music, like the clavichord, slight and soft, undynamic and of an extraordinary sensibility, capable of plucking from life its most beautiful, most tender, most amusing motifs.

But Nigel Balchin is in danger. *The Last Recollections of My Uncle Charles* will be so appreciated by the disenchanted among egalitarian critics and by what remains of the discerning public that an effort will be made to apotheosize him, to ascribe to his finger exercises protean significances. May God spare him this. Uncle Charles tells his stories over a cordial. Like some sherries, his observations on human foibles can be exquisite; but what grossness it would be to make of him a great Burgundy! There are, of course, profound overtones and tragic nuances. But it is a violation of high order to try to make a Cellini candelabrum a School of Athens. Uncle Charles would never forgive you.

PETER CRUMPET

Sordid Appeasement

God Is Late, by Christine Arnothy. Translated from the French by Anne Green. 191 pp. New York: E. P. Dutton & Co. $3.50

God Is Late is a soul-sickening portrayal of the price of appeasement. The suffering of the Hungarian people under Communist "liberation" is unforgettably depicted here and the book could have had enormous impact had its power not been dissipated through a stubborn insistence on seeing the Hungarians as frightened people, eager to pay any price for survival, obsessed with sex, fear and hatred of one another.

War and the cruelty of Communist occupation are bound to have their effect morally and emotionally as well as physically; but it would be difficult to find more unpleasant characters than those Miss Arnothy has chosen to present her premise that "new times bring new morals." What happens to Gaby, intent upon her own desires and pleasures, does not seem very important while putrefying corpses litter the streets and the radio announces the death sentences passed that day. Her sordid affair with the Commissar does not arouse much sympathy despite the ever-present threat of the blue card which means deportation. Nor is Janos, her husband, any more admirable. Eager to please the Commu-

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nists, he condones her behavior with the Commissar. There is the usual mother-in-law, fawning over her son; and the sister, Anna, hard, selfish, suspicious. There is the Jew who tries to buy safety through baptism by a Catholic priest; the notary who loathes the Communists but collaborates; and the young girls to whom uninhibited sex is the sum of existence. But when deportation or death may be only minutes away, when deprivation is present and starvation imminent, it is unbelievable that sex could assume such exaggerated importance, or that shared dangers could turn family members into such cruel antagonists. There is powerful writing in this novel, but it is almost wasted in a miasma of sordidness.

FRANCES BECK

Remember Finland?

The Winter War, by Vaino Tanner. 274 pp., Stanford University Press. $5.00

This very well done book of personal history also presents, most competently, the political and diplomatic side of Finland's fight against Soviet aggression in 1939-40. (A good military account can be found in the memoirs of Marshal Mannerheim, published here some three years ago.)

Mr. Tanner has a gripping story to tell about this half-forgotten, early act of the second World War. As Foreign Minister from the outbreak of the war in Finland to its end, he is able to describe the fateful Soviet encroachment. It is a prototype of Communist tactics: the territorial demands; the uncompromising attitude; the stiffening of the demands when Finland yielded on some points; the vicious propaganda assault while negotiations still continued, the manufactured border incident; the scrapping of the non-aggression treaty; and finally the undeclared attack, beginning with the bombing of residential districts in Helsinki.

Mr. Tanner spent five and a half years in prison as a "war criminal" at Soviet insistence, but a few weeks ago he was elected leader of the Finnish Social Democrats. Judging from the book, his party has again a courageous and resourceful leader.

MONTGOMERY M. GREEN

REVIEWED IN BRIEF

Massacre: The Tragedy at White River, by Marshall Sprague. 364 pp. Little, Brown. $5.00

In 1879 an Indian Agent, a typical do-gooder determined to sow sweetness and light among the "underprivileged," so exasperated the Utes under his charge that they killed him and his aides, abducted the white women at the agency, and ambushed a troop of cavalry. Consequently the Utes were expelled from their reservation in Colorado. A competent writer could have told the whole story in no more space than De Quincey, for example, needed in *Blackwood's* to describe the revolt of the Kalmuck Tartars. Mr. Sprague has inflated it into one of the hundreds of books that drop from the presses each season to prove that one consequence of the general decline in literacy is a flood of flaccid verbosity.

In a Great Tradition: The Life of Dame Laurentia McLachlan, Abbess of Stanbrook, by the Benedictines of Stanbrook. 320 pp. Harper. $5.00

The nuns of Stanbrook have produced a beautiful memorial to their late abbess, who was evidently an extraordinary woman. Of Highland and Huguenot ancestry, she took the veil when she was eighteen, made herself an authority on liturgical music, and maintained cordial friendships with a number of prominent men, including Sir Sydney Cockerell and George Bernard Shaw. Shaw's letters to her contain passages which will astonish most of his admirers.

The Great Famine, edited by R. Dudley Edwards and T. Desmond Williams. 517 pp. N. Y. University Press. $6.00

Ireland was dangerously overpopulated in 1845 when a blight began to destroy the potatoes that were virtually the only food of a large part of the population. During seven years of famine some of the Irish actually starved to death, more died of typhus and other epidemic diseases, and almost 1,500,000 emigrated to the United States and Canada. The seven authors of this book have given a comprehensive account of the famine and its consequences. For American readers, however, they should have noted one significant fact: the island which in 1845 had a population of over 8,000,000, now supports a population of about 4,250,000.

The Radiant Mountain, by Heinz von Homeyer, translated by Elinor Castendyk Briefs. 219 pp. Regnery. $4.00

This is ostensibly a diary kept by a former schoolteacher who, in the company of a Czarist general, led for some fourteen years a precarious life as a vagabond in Soviet Russia. The novel has an inner cogency that forces the reader to accept both its vivid scenes and its characters as authentic and unmistakably Russian. But if this book is to be taken as an expression of the author's own opinions, we must raise the question whether the morbid sentimentality and covert nihilism of the "great Russian novel" does not represent in the Western world an aberration of taste and judgment that should be consigned to the past.

The 27th Day, by John Mantley. 248 pp. Dutton. $3.50

In the annals of pseudo-scientific fiction Upton Sinclair is to be remembered for one brilliant idea. His silly play, *The Millenium,* turns upon the discovery of a means of annihilating human beings without damaging the rest of the world. Mr. Mantley has combined this idea with the now commonplace theme of superior beings from another solar system who desire to establish a colony on the earth. The story has its moments and an ingenious denouement. It will hold the reader's attention. The crisis comes when the U.S., menaced by the new weapon, is forced to retreat before the Russians and to withdraw from Europe and Asia. "Formosa was in Red hands. . . . East Germany had occupied all of Berlin and West Germany. . . . American prestige had collapsed." Many a reader will reflect that our State Department seems quite capable of doing that job before 1963 and without assistance from Outer Space.

(Reviewed by Revilo Oliver)

To the Editor

Foiled Again!

Sympathetic as I may be with Forrest Davis' ingenious suggestion [July 6] that Congress "could reduce the salaries of associate justices from $35,000 to $3,500 a year," I cannot resist inquiring what Mr. Davis would have us do with Article III, Section 1, of the Constitution?

While it is difficult to rely upon the permanence of anything in the Constitution as it is amended by the Court these days, I feel certain their reverences have scrupulously upheld the clause which promises that members of the Court "shall at stated times receive for their services a compensation which shall not be diminished during their continuance in office."

That won't work. What else might be tried?

Richmond, Va. JAMES J. KILPATRICK

John Locke, Rationalist

In your issue of July 6 you thought it "fitting to pay homage to old John Locke, the seventeenth century English philosopher, whose ideas on civil government (and even his phraseology [*sic*]) were lifted by Thomas Jefferson and placed bodily into the text of the Declaration of Independence." I agree.

At the same time I wish to suggest that, while we may pay homage to Locke during Independence week, it might be even more fitting throughout the year to mourn his role as a rationalist philosopher in leading our civilization from the height of God-centered certainty toward a morass of man-centered uncertainty.

By theorizing that "there is nothing in the mind except what was first in the senses," Locke pioneered for substituting the tool (*i.e.*, the brain) for the essence (*i.e.*, our awareness of God). While regarding himself as a good Christian, he actually concentrated on animal instinct and de-spiritualized thought, depriving himself and his followers of the only way to obtain right guidance in carrying on their task on earth.

Upper Montclair, N.J. FELIX WITTMER

The Case for "Tough" Colleges

No one who reads anything above the level of the comics is unaware that our public schools are under heavy fire. The elementary schools do not teach Johnny to read, it is charged; and the high schools turn out graduates who could not compete in reading, writing and reckoning (the original three R's, by the way) with the alumni of the one-room schoolhouses of two generations back. The prize case that has lately come up in the news was that of a hefty young man, arrested for a misdemeanor, who was the graduate of a New Jersey high school but who had later been tossed out of the U.S. Marine Corps as an illiterate.

I've lately had an opportunity to hear, second-hand, a great deal of gossip "from the Academy." From this I've learned that there is no more harassed, bedeviled and frustrated class of well qualified teachers in this country than the instructors in those small colleges which go foraging for students and admit to their freshman classes anyone whom any high school calls a graduate. . . .

From this gossip I have gleaned some information and ideas. There are quite a few small colleges in this country which do not have to go out into the highways and the byways in search of students; but which must, on the other hand, make their entrance requirements stiffer and stiffer, . . . to keep their student bodies down to limits imposed by their facilities. These are invariably known as "tough" schools. They are not only hard to enter but weed out slackers through rigid periodical tests and ruthless flunking. All hands agree that these are the institutions into which every ambitious student, who thinks he is qualified, struggles to be enrolled, because graduation from them means something to employers and to the best graduate professional schools. Contrasted with these are the soft and easy colleges which lower their standards to attract that great body of high school graduates who are determined to "go to college" and to go through college—any kind of a college, somehow.

The suggestion that comes to me from the junior faculty members in the soft and easy institutions is that any little college which has the courage to go "tough" will very shortly profit by that policy and find itself among the few dozen little institutions which must annually reject applicants by the gross. . . . It is further suggested that a trend in this direction (whether because of foresight or as a result of conspiracy) would have an effect on the high schools . . .

If it were to become evident to a school board, or to parents in any community, that the graduates of its high school could not meet the entrance requirements of any reputable college . . . the taxpayers in that community would stir up an unholy stench, wouldn't they? . . .

Bernardsville, N.J. HEPTISAX

HOW TO MAKE MONEY

(*Continued from p.* 89)

pattern, though none has been quite as spectacular as that first venture. But, a few years ago we owned a Studebaker. It gave us satisfaction, it paid a good dividend, and Paul Hoffman was in India on leave of absence. So I bought a hundred at 32 and watched smugly as it climbed slowly but surely. Then one day I came across an item that Paul Hoffman was returning to the management. I knew Mr. Hoffman as a noted exponent of the giveaway theory and I reasoned that Studebaker could not make money by giving its cars away, so I sold out at 38.

The rest is history. Mr. Hoffman *did* come back—and shortly thereafter, the company omitted its dividend and nose-dived some 30 points. You couldn't, apparently, *give* Studebakers away. It's selling around seven at this writing, and still pays no dividend. But they have now got rid of Mr. Hoffman and, if this policy continues, it may turn out to be a good buy again.

And there you have the secret. You must keep looking for special situations. As I come across them, I shall be glad to point them out in these columns. Of course, what I would really love to get out of is the United Nations, but, alas!, I never took any stock in that at all.